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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,165	01/02/2002	David Alan Burton	TUC920010058US1	7814

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EXAMINER

BETIT, JACOB F

ART UNIT	PAPER NUMBER
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2164

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

87

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/038,165

Applicant(s)

BURTON ET AL.

Examiner

Jacob F. Betit

Art Unit

2164

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
**CHARLES RONES**  
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments made in the request for reconsideration filed 21-June-2005 have been considered but are not deemed persuasive:

In response to the applicant's arguments that "Enoki does not teach or suggest the claim requirements that the one remote storage location address where the requested file is located be more proximate to the remote computer than to the server", the arguments have been fully considered but are not deemed persuasive. As the examiner previously cited figure 1 clearly shows that two of the three client computers (109b and 109c) are closer to the file systems (104a and 104b) than to the file management apparatus (102). The applicant argues "the servers are merely coupled to the clients over a network in the cited Enoki". The claimed invention appears to be connected in the same way as the cited reference (i.e. the claims do not cite limitations claiming there is more gateways, routers, switches, or firewalls between the server computer and the remote storage location than between the remote computer and the remote storage location). The applicant has asked the examiner to "indicate which lines of the cited Enoki or the cited Xu teach or suggest the claim requirement". The examiner feels that nowhere in either of these cited references is this limitation better indicated than in figure 1 as previously referenced. The drawings of Enoki are as much a part of the disclosure of the invention as the specification.

In response to the applicant's arguments that "in the cited Xu the file is located in the server", which contains both the file system and the data mover", the arguments have been fully considered but are not deemed persuasive, Xu clearly depicts the data mover as its own separate computer and the file system as another separate computer which are combined to be called the "file server system". This is best depicted in the description of the prior art in the background section (column 1, line 65 through column 2, line 19):

a network file server system having at least two data mover computers 21 and 22... As shown, the file systems 12, 14 are respective volumes of data contained in the same cached disk array 25, although alternatively each file system 12, 14 could be contained in a respective one of two separate cached disk arrays. For example, each of the data mover computers 21, 22 has a respective high-speed data link to a respective port of the cached disk array 25...

The quoted text shows that these two objects are located remote from each other and that it is possible to break them further apart as in the modification done in view of Enoki.

In response to the applicant's arguments that "[t]he motivation provided by the examiner... is improper because this motivation could lead to many different results and not to the claim requirements", the arguments have been fully considered but are not deemed persuasive. The motivation seems to have plenty of backing in the prior art including in the cited "File Migration in Distributed Computer Systems" reference. Further there seems to be plenty of reason in the prior art not to put the file system on the local client system as suggested was another possible scenario by the applicant (i.e. limited storage on a client's computer and problems accessing the data when the client's computer is shut down for any variety of reasons).

In response to the applicant's arguments that "the claims require the server to update the metadata for the requested file", the arguments have been fully considered but are not deemed persuasive. The cited section of Xu discloses "a client in the data network of Fig. 3 behaves in a fashion similar to a data mover in Fig. 2 that does not own a file system to be accessed. In the discussion of figure 2 (column 9, lines 19-39), Xu discloses

If a write operation changes any of the file attributes, then the new file attributes are written from the first data mover 41 to the second data mover, and after the write data is committed to the second file system 44, the second data mover commits any new file attributes by writing the new file attributes to the file system.

Therefore Xu inherently includes this limitation.